

Memorandum on Baselines

DRAFT

FOR US DELEGATION MEMBERS ONLY

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PROVISION 4

U.S. Preferred Alternative: Formula A

U.S. Alternative Preference: A modified Formula A to include specific criteria

(1) FORMULA A Text

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

(2) SOURCE: 1958 Geneva Convention on the Territorial Sea, Section II, Article 3 plus other texts submitted by various states in Caracas.

(3) ANALYSIS: The existing language of the Convention on the Terrritorial Sea has had wide-spread acceptance and has generally worked well. Article 3 has three essential problems inherent in its current construction and language:

(a) In a recent ECAFE report on mapping, it was noted that approximately 75% of the coastal states of the world do not have the capacity to perform their own hydrographic surveys and to produce their own navigational and coastal charts. As a consequence, "officially-recognized" charts

State Dept. review completed

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are often difficult to identify in the absence of a requirement in the Convention for the coastal state to specify a chart or series of charts. Most mariners assume the charts they are utilizing to be accurate depictions on which they may rely. Unfortunately, if the chart is made by a foreign source, local features not associated directly with navigation, i.e., bouys, lights, etc., may not be current or accurately depicted. Generally mariners rely on navigational charts produced by the United States (DMA/HC), the United Kingdom (Admiralty) or France. Often these charts will be utilized even if locally-produced charts are available; language problems, widespread availability, familiarity, etc. tend to favor the use of US, UK and French charts. For a variety of reasons, primarily budgetary, foreign produced charts may be, and often are, out-of-date in their depiction of the baseline which is not deemed essential for navigation.

Some coastal states, of course, do not release their large-scale charts.

(b) In US court cases, the courts have often ignored the charted position of the baseline to seek the actual baseline as it existed at the time of the cause of the litigation. This fact argues for a specific series of boundary maps rather than reliance upon charts, i.e., navigational maps, or requirements for the continuous revision of nautical charts which depict the actual and existing baseline. Cost and other factors make this option virtually impossible for specific inclusion in an international treaty

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(c) Even in the United States, which has a highly developed coastal mapping program, the depicted baseline will vary from chart series to chart series. The differences have more to do with the intent of the particular scale of the series rather than with the scale itself. Low tide features, which serve as basepoints for the determination of the territorial sea, may be left off of coastal navigation charts but be shown on harbor charts. The latter cannot be used for territorial sea measurement since they do not extend 3 nautical miles let alone 12 nautical miles seaward. Moreover, differences in baseline depiction may occur as a result of printing dates; in this event, bordering sheets may not match and the mariner must assume the newer chart is the more accurate chart. Cost appears to be the primary factor but, as noted, choices made by draftsmen may enter into the equation.

(4) US OPINION: The technical group which examined these questions prior to Caracas concluded that the United States should not attempt to revise the existing language of the Convention on the Territorial Sea and the Contiguous Zone as it is related to the normal baseline for the measurement of the territorial sea.

(5) TECHNICAL AND DRAFTING PROBLEMS: Most coastal states do not have coast guards which possess the sophisticated equipment necessary for the determination of ship positions

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within a degree of accuracy necessary to warrant a redraft of the existing language.. However, if the Article becomes open for revision, the US should attempt to add additional language which would require, as in the straight baseline articles, that the coastal state give due publicity to the charts which it recognizes as official. A chart depository could be established under UN auspices. All states would be required to deposit their official charts and the UN would give due publicity to them.

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(1) FORMULA B TEXT

A coastal State may adopt its own method of drawing the baseline according to the topographical features of its coast.

In localities where the coastline is regular or the coast is low and flat, the method of natural baseline, may be employed for measuring the breadth of the territorial sea.

(2) SOURCE: ^{China} Variant C, Art. 2, Question 2.3.1., Report of the Committee etc. Vol. IV, page 5, General Assembly Official Records: Twenty-eighth Session, Supplement No. 21 (A/9021).

(3) ANALYSIS: The language of Paragraph 1 of the formula is so broad that it would permit any form of baseline under any set of geographical circumstances. Although Paragraph 1 is presumably conditioned by Paragraph 2, so as to eliminate certain types of "low coastlines", (for which straight baselines are already in existence, e.g., Germany and Denmark), the general language would permit Canada and Greece to include their archipelagos with a system of straight baselines under "special topographical features" of the coast.

(4) US OPINION: The language is infinitely worse than the existing Convention. Formula B removes, for example, the need for officially-recognized large-scale charts. As a consequence, the mariner would be at a complete disadvantage in knowing the precise location of the baseline and hence the outer limit of the territorial sea. The language further

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permits any kind of baseline to be drawn so long as it is in accordance with the topographical features of the coast. While it is assumed the language refers to a form of straight baseline system, one can imagine all types of baselines including curved lines, serrated systems, etc. which can be claimed to be in "accordance" with the topographical features. The US should not support Formula B in its present or even in a modified form.

(5) TECHNICAL AND DRAFTING PROBLEMS: The loose language of Formula B is so open-ended that the US should not attempt to "improve" the language. Rather, this alternative formula should be opposed.

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